

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GERALD ROBINSON,)
Petitioner,)
v.) No. 4:16CV1355 ERW
UNITED STATES OF AMERICA,)
Respondent.)

MEMORANDUM AND ORDER

This matter is before me on the motion of petitioner Gerald Robinson to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. For his sole ground for relief, petitioner states: “[b]ased on a new amendment 794 in conjunction with 3B1.2, petitioner is entitled to a four level adjustment for a minor role participation in the offense that was made retroactive in November of 2015.” (Docket No. 1 at p. 3). Petitioner filed a memorandum in support of his motion, arguing that his sentence should be reduced because of Amendment 794 to the United States Sentencing Guidelines, which clarified the meaning of “minor role” reductions in § 3B1.2.

The only relief petitioner is seeking is a sentence reduction through a clarifying amendment to the U.S. sentencing guidelines, relief which is not cognizable in a § 2255 motion to vacate. The only existing authority for the Court to modify petitioner’s sentence comes from Rule 35 of the Federal Rules of Criminal Procedure, or 18 U.S.C. § 3582, which is properly sought through a motion for reduction in sentence in petitioner’s criminal case.

Therefore, the Court will order the Clerk of Court to administratively terminate the instant action, and re-docket petitioner’s motion as a motion for reduction in sentence pursuant to Rule 35 of the Rules of Criminal Procedure in his criminal case.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall **ADMINISTRATIVELY TERMINATE** this action.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer petitioner's motion to vacate and his memorandum in support (Docket Nos. 1 and 2) to his criminal case, *United States v. Robinson*, No. 4:06-cr-00033-ERW-2, and docket them as: "motion for reduction in sentence" brought pursuant to 18 U.S.C. § 3582, and "memorandum in support," respectively. The government shall respond to petitioner's motion in a timely fashion.

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

Dated this 4th day of October, 2016.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE